

**REMARKS**

**I. Status of Claims**

Claims 1-15, 36-38, 47, 48, 51, and 53-94 are currently pending. By this amendment, Applicants have canceled without prejudice claims 34, 35, and 52. Claims 1, 51, and 90 have been amended. Support for the amendment to claims 1 and 90, reciting that the ratio by weight of the at least one compound chosen from fatty acid esters and metal oxides to the at least one associative polymer ranges from 0.1 to 10, can be found in the originally-filed specification, for example on page 37, paragraph [0180], and in original claim 51. Support for the amendment to claim 51 can also be found in the originally-filed specification, for example on page 37, paragraph [0180], and in original claim 52. No new matter has been added.

**II. Rejection under 35 U.S.C. § 102(b)**

Claims 1-9, 14, 15, 34, 35, 47, 48, 53-73, and 75-94 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent Application Publication No. 2001/0023514 A1 to Cottard et al. ("Cottard"). Applicants respectfully traverse the rejection to the extent it applies to currently pending claims 1-9, 14, 15, 47, 48, 53-73, and 75-94, as amended.

To anticipate a claim, a reference must teach each and every element as set forth in that claim. M.P.E.P. § 2131. "The elements must be arranged as required by the claim," although identical terminology is not required. *Id.* Furthermore, for a reference to be anticipatory under 35 U.S.C. § 102, it must "clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without any need for picking, choosing, and combining various disclosures . . . ." *In re Arkley*,

455 F.2d 586, 587 (CCPA 1972). Thus, the standard for anticipation requires not only that a reference disclose the elements of the claim, but also that those elements be arranged in the reference as they are arranged in the claim, without picking and choosing from various parts of the disclosure. Cottard simply does not meet this high threshold and, thus, does not anticipate the present claims, as amended.

Independent claims 1 and 90 are directed towards compositions for the oxidation dyeing of keratin fibers comprising (a) at least one oxidation dye; (b) at least one fatty alcohol; (c) at least one associative polymer chosen from cationic polyurethanes; (d) at least one compound chosen from fatty acid esters and metal oxides; and (in claim 90) (e) at least one oxidizing agent. Furthermore, both claims 1 and 90, as amended, require that the ratio by weight of the at least one compound chosen from fatty acid esters and metal oxides to the at least one associative polymer ranges from 0.1 to 10.

Cottard does not disclose at least one associative polymer chosen from cationic polyurethanes, as claimed herein. Moreover, Cottard fails to disclose a weight ratio wherein the ratio of at least one compound chosen from fatty acid esters and metal oxides to at least one associative polymer ranges from 0.1 to 10. Thus, it is indisputable that Cottard fails to teach a composition wherein all of the elements are present, as required by M.P.E.P. § 2131.

Moreover, Cottard's only Example fails to disclose a composition as claimed herein, as the example lacks at least one associative polymer chosen from cationic polyurethanes, as claimed herein. See Cottard at pages 18-19, paragraphs [0370-71]. Rather, the polymers incorporated into the example include a non-ionic polyether polyurethane, Aculyn 44 (see Cottard at page 5, paragraph [0092]) and a cationic

polymer of formula (W), neither of which are within the scope of the present claims, as amended. Accordingly, none of the present claims are anticipated by Cottard.

### III. Rejections under 35 U.S.C. § 103

#### A. Cottard

Claim 74 has been rejected under 35 U.S.C. § 103 as allegedly obvious over Cottard. According to the Office, Cottard teaches all of the elements of claim 74, yet the Office admits that “[t]he instant claim[ ] differ[s] from the reference by reciting fatty alcohol in the percentage amount of 0.5 to 20% as claimed.” November 29, 2005, Office Action at 5. Nonetheless, the Office concludes the claim would have been obvious “because the reference clearly teaches a composition comprising fatty alcohols in the amounts of 0.05 to 20% . . . , wherein the amount of fatty alcohols in the prior art composition is overlapped with the claimed amounts.” *Id.* Applicants respectfully traverse.

To establish a *prima facie* case of obviousness, the Office must demonstrate, among other things, that each and every element of the claims is taught or suggested by the reference. M.P.E.P. § 2143. In the present case, the Office has failed to establish a *prima facie* case of obviousness for at least the reason that elements of claim 1, upon which claim 74 indirectly depends, are not taught or suggested by the reference. M.P.E.P. § 2143. As discussed above, Cottard nowhere teaches or suggests at least one associative polymer chosen from cationic polyurethane and a composition wherein the ratio by weight of the at least one compound chosen from fatty acid esters and metal oxides to the at least one associative polymer ranges from 0.1 to 10. Accordingly, Applicants respectfully request withdrawal of the rejection.

**B. Cottard in view of Eteve**

Claims 10-13, 51, and 52 have been rejected as allegedly obvious over Cottard in view of U.S. Patent No. 5,788,955 to Eteve et al. ("Eteve"). Applicants address the rejection herein to the extent it applies to claims 10-13 and 51, as amended. Although the Office recognizes that Cottard "does not teach or disclose the claimed metal oxides," the Office attempts to rectify that deficiency with Eteve, which teaches "a composition comprising coated titanium oxides as claimed in claims 10-12 . . . and uncoated titanium oxides as claimed in claim 13 . . . ." November 29, 2005, Office Action at 6.

Eteve, however, does not cure the deficiencies of Cottard discussed above, i.e., it does not teach or suggest all the claimed elements, specifically the at least one associative polymer chosen from cationic polyurethane or the claimed weight ratio, and thus, no *prima facie* case of obviousness has been established. For at least those reasons, Applicants respectfully request reconsideration of the rejection.

**C. Cottard in view of Laurent**

Claims 36-38 have been rejected as allegedly obvious over Cottard in view of U.S. Published Patent Application 2002/0046431 A1 to Laurent et al. ("Laurent"). Although the Office admits that Cottard "does not teach or disclose the cationic amphiphilic polyurethane polymers as claimed," the Office attempts to rectify that deficiency with Laurent as teaching "a composition comprising a cationic polyurethane of formula (Ia) . . . ." November 29, 2005, Office Action at 6-7. Laurent, however, does not cure the deficiencies of Cottard discussed above, i.e., it does not teach or suggest all the claimed elements, specifically the claimed weight ratio. Therefore no *prima facie*

case of obviousness has been established, and Applicants respectfully request reconsideration of the rejection.

#### **IV. Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request the Office's reconsideration of the application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: November 27, 2006

By: Erin C. DeCarlo  
Erin C. DeCarlo  
Reg. No. 51,688